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SENATE BILL 414

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO BUSINESS; SPECIFYING EXPIRATION DATES FOR GIFT
CERTIFICATES; AMENDING THE UNIFORM UNCLAIMED PROPERTY ACT
(1995); CREATING A FUND; PROVIDING FOR A SUPPLEMENTAL
ASSESSMENT UNDER THE MEDICAL INSURANCE POOL ACT; PROVIDING FOR
A CREDIT AGAINST THE PREMIUM TAX; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is
enacted to read:

"NEW MATERIAL] DISTRIBUTION--MEDICAL INSURANCE POOL
ENHANCEMENT FUND.--A distribution pursuant to Section 7-1-6.1
NMSA 1978 shall be made to the medical insurance pool
enhancement fund from the amount deposited pursuant to the
provisions of the Uniform Unclaimed Property Act (1995) that is
attributable to the proceeds received pursuant to that act from
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1 unredeemed gift certificates as provided in Paragraph (7) of
2 Subsection A of Section 7-8A-2 NMSA 1978."

3 Section 2. Section 7-8A-2 NMSA 1978 (being Laws 1997,
4 Chapter 25, Section 2, as amended) is amended to read:

5 "7-8A-2. PRESUMPTIONS OF ABANDONMENT.--

6 A. Property is presumed abandoned if it is
7 unclaimed by the apparent owner during the time set forth below
8 for the particular property:

9 (1) traveler's check, fifteen years after
10 issuance;

11 (2) money order, seven years after issuance;

12 (3) stock or other equity interest in a
13 business association or financial organization, including a
14 security entitlement under Article 8 of the Uniform Commercial
15 Code, five years after the earlier of:

16 (a) the date of the most recent
17 dividend, stock split or other distribution unclaimed by the
18 apparent owner; or

19 (b) the date of the second mailing of a
20 statement of account or other notification or communication
21 that was returned as undeliverable or after the holder
22 discontinued mailings, notifications or communications to the
23 apparent owner;

24 (4) debt of a business association or
25 financial organization, other than a bearer bond or an original

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1 issue discount bond, five years after the date of the most
2 recent interest payment unclaimed by the apparent owner;

3 (5) a demand, savings or time deposit,
4 including a deposit that is automatically renewable, five years
5 after the earlier of maturity or the date of the last
6 indication by the owner of interest in the property; but a
7 deposit that is automatically renewable is deemed matured for
8 purposes of this section upon its initial date of maturity,
9 unless the owner has consented to a renewal at or about the
10 time of the renewal and the consent is in writing or is
11 evidenced by a memorandum or other record on file with the
12 holder;

13 (6) money or credits owed to a customer as a
14 result of a retail business transaction, three years after the
15 obligation accrued;

16 (7) gift certificate, [~~five~~] two years after
17 December 31 of the year in which the certificate was sold if a
18 gift certificate is not redeemed in full by that date, but if
19 redeemable in merchandise only, the amount abandoned is deemed
20 to be [~~sixty~~] ninety percent of the certificate's face value;

21 (8) amount owed by an insurer on a life or
22 endowment insurance policy or an annuity that has matured or
23 terminated, three years after the obligation to pay arose or,
24 in the case of a policy or annuity payable upon proof of death,
25 three years after the insured has attained, or would have

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1 attained if living, the limiting age under the mortality table
2 on which the reserve is based;

3 (9) property distributable by a business
4 association or financial organization in a course of
5 dissolution, one year after the property becomes distributable;

6 (10) property received by a court as proceeds
7 of a class action and not distributed pursuant to the judgment,
8 one year after the distribution date;

9 (11) property held by a court, government,
10 governmental subdivision, agency or instrumentality, one year
11 after the property becomes distributable;

12 (12) wages or other compensation for personal
13 services, one year after the compensation becomes payable;

14 (13) deposit or refund owed to a subscriber by
15 a utility, one year after the deposit or refund becomes
16 payable;

17 (14) property in an individual retirement
18 account, defined benefit plan or other account or plan that is
19 qualified for tax deferral under the income tax laws of the
20 United States, three years after the earliest of the date of
21 the distribution or attempted distribution of the property, the
22 date of the required distribution as stated in the plan or
23 trust agreement governing the plan or the date, if determinable
24 by the holder, specified in the income tax laws of the United
25 States by which distribution of the property must begin in

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1 order to avoid a tax penalty; and

2 (15) all other property, five years after the
3 owner's right to demand the property or after the obligation to
4 pay or distribute the property arises, whichever first occurs.

5 B. At the time that an interest is presumed
6 abandoned under Subsection A of this section, any other
7 property right accrued or accruing to the owner as a result of
8 the interest, and not previously presumed abandoned, is also
9 presumed abandoned.

10 C. Property is unclaimed if, for the applicable
11 period set forth in Subsection A of this section, the apparent
12 owner has not communicated, in writing or by other means
13 reflected in a contemporaneous record prepared by or on behalf
14 of the holder, with the holder concerning the property or the
15 account in which the property is held and has not otherwise
16 indicated an interest in the property. A communication with an
17 owner by a person other than the holder or its representative
18 who has not in writing identified the property to the owner is
19 not an indication of interest in the property by the owner.

20 D. An indication of an owner's interest in property
21 includes:

22 (1) the presentment of a check or other
23 instrument of payment of a dividend or other distribution made
24 with respect to an account or underlying stock or other
25 interest in a business association or financial organization

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1 or, in the case of a distribution made by electronic or similar
2 means, evidence that the distribution has been received;

3 (2) owner-directed activity in the account in
4 which the property is held, including a direction by the owner
5 to increase, decrease or change the amount or type of property
6 held in the account;

7 (3) the making of a deposit to or withdrawal
8 from a bank account; and

9 (4) the payment of a premium with respect to a
10 property interest in an insurance policy; but the application
11 of an automatic premium loan provision or other nonforfeiture
12 provision contained in an insurance policy does not prevent a
13 policy from maturing or terminating if the insured has died or
14 the insured or the beneficiary of the policy has otherwise
15 become entitled to the proceeds before the depletion of the
16 cash surrender value of a policy by the application of those
17 provisions.

18 E. Property is payable or distributable for
19 purposes of the Uniform Unclaimed Property Act (1995)
20 notwithstanding the owner's failure to make demand or present
21 an instrument or document otherwise required to obtain
22 payment."

23 Section 3. Section 7-8A-4 NMSA 1978 (being Laws 1997,
24 Chapter 25, Section 4) is amended to read:

25 "7-8A-4. RULES FOR TAKING CUSTODY.--Except as otherwise

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1 provided in the Uniform Unclaimed Property Act (1995) or by
2 other statute of this state, property that is presumed
3 abandoned, whether located in this or another state, is subject
4 to the custody of this state if:

5 [~~1~~] A. the last known address of the apparent
6 owner, as shown on the records of the holder, is in this state;

7 [~~2~~] B. the records of the holder do not reflect
8 the identity of the person entitled to the property and it is
9 established that the last known address of the person entitled
10 to the property is in this state;

11 [~~3~~] C. the records of the holder do not reflect
12 the last known address of the apparent owner and it is
13 established that:

14 [~~i~~] (1) the last known address of the person
15 entitled to the property is in this state; or

16 [~~ii~~] (2) the holder is domiciled in this
17 state or is a government or governmental subdivision, agency or
18 instrumentality of this state and has not previously paid or
19 delivered the property to the state of the last known address
20 of the apparent owner or other person entitled to the property;

21 [~~4~~] D. the last known address of the apparent
22 owner, as shown on the records of the holder, is in a state
23 that does not provide for the escheat or custodial taking of
24 the property and the holder is domiciled in this state or is a
25 government or governmental subdivision, agency or

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1 instrumentality of this state;

2 [~~(5)~~] E. the last known address of the apparent
3 owner, as shown on the records of the holder, is in a foreign
4 country and the holder is domiciled in this state or is a
5 government or governmental subdivision, agency or
6 instrumentality of this state;

7 [~~(6)~~] F. the transaction out of which the property
8 arose occurred in this state [~~the holder is domiciled in a~~
9 ~~state that does not provide for the escheat or custodial taking~~
10 ~~of the property]~~ and the last known address of the apparent
11 owner or other person entitled to the property is unknown or is
12 in a state that does not provide for the escheat or custodial
13 taking of the property; or

14 [~~(7)~~] G. the property is a traveler's check or
15 money order purchased in this state or the issuer of the
16 traveler's check or money order has its principal place of
17 business in this state and the issuer's records show that the
18 instrument was purchased in a state that does not provide for
19 the escheat or custodial taking of the property, or does not
20 show the state in which the instrument was purchased."

21 Section 4. Section 57-12-26 NMSA 1978 (being Laws 2007,
22 Chapter 125, Section 1) is amended to read:

23 "57-12-26. GIFT CERTIFICATES--EXPIRATION--FEES--
24 PENALTIES.--

25 A. As used in this section, "gift certificate"

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1 means a writing identified as a gift certificate that is not
2 redeemable in cash and is usable in its face amount in lieu of
3 cash in exchange for goods or services supplied by a seller,
4 but does not include a gift certificate useable with multiple
5 unaffiliated sellers or goods or services. "Gift certificate"
6 includes an electronic card with a banked dollar value, a
7 merchandise credit, a certificate where the issuer has received
8 payment for the full face value for the future purchase or
9 delivery of goods or services and any other medium that
10 evidences the giving of consideration in exchange for the right
11 to redeem the certificate, electronic card or other medium for
12 goods or services of at least an equal value. "Gift
13 certificate" does not include:

14 (1) gift certificates, store gift cards or
15 general use prepaid cards distributed to a consumer for
16 promotional, award, incentive, rebate or other similar purposes
17 without any money or other tangible thing of value being given
18 by the consumer in exchange for the gift certificate, store
19 gift card or general use prepaid card;

20 (2) gift certificates, store gift cards or
21 general use prepaid cards that are sold below face value or at
22 a volume discount to employers or to nonprofit and charitable
23 organizations for fund-raising purposes;

24 (3) written promises, plastic cards or other
25 electronic devices that are:

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1 (a) used solely for telephone services;
2 or

3 (b) are associated with a deposit,
4 checking, savings or similar account at a banking or other
5 similarly regulated financial institution and that provide
6 payments solely by debiting such account; and

7 (4) gift certificates issued by banks, savings
8 and loan associations and their affiliates and subsidiaries,
9 licensed money transmitters or credit unions operating pursuant
10 to the laws of the United States or New Mexico.

11 ~~[B. A gift certificate shall not have an expiration~~
12 ~~date less than sixty months after the date upon which the gift~~
13 ~~certificate was issued. If an expiration date is not~~
14 ~~conspicuously stated on a gift certificate, that gift~~
15 ~~certificate shall be presumed to have no expiration date and~~
16 ~~shall be valid until redeemed or replaced.]~~

17 B. A gift certificate shall expire twenty-four
18 months after the date upon which the gift certificate was
19 issued, and the time period until expiration shall be
20 conspicuously stated on a gift certificate.

21 C. An issuer of a gift certificate shall not charge
22 a fee of any kind in relation to the sale, redemption or
23 replacement of a gift certificate other than an initial charge
24 not exceeding the face value of the gift certificate, nor may a
25 gift certificate be reduced in value by any fee, including a

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1 service or dormancy fee.

2 D. A violation of this section shall constitute an
3 unfair or deceptive trade practice and shall be subject to the
4 penalties set forth in the Unfair Practices Act."

5 Section 5. Section 59A-54-10 NMSA 1978 (being Laws 1987,
6 Chapter 154, Section 10, as amended) is amended to read:

7 "59A-54-10. ASSESSMENTS.--

8 A. Following the close of each fiscal year, the
9 pool administrator shall determine the net premium, being
10 premiums plus the total amount of supplemental assessments less
11 administrative expense allowances, the pool expenses and claim
12 expense losses for the year, taking into account investment
13 income and other appropriate gains and losses. The assessment
14 for each insurer shall be determined by multiplying the total
15 cost of pool operation by a fraction, the numerator of which
16 equals that insurer's premium and subscriber contract charges
17 or their equivalent for health insurance written in the state
18 during the preceding calendar year and the denominator of which
19 equals the total of all premiums and subscriber contract
20 charges written in the state; provided that premium income
21 shall include receipts of medicaid managed care premiums but
22 shall not include any payments by the secretary of [~~health and~~]
23 human services pursuant to a contract issued under Section 1876
24 of the Social Security Act, as amended. The board may adopt
25 other or additional methods of adjusting the formula to achieve

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1 equity of assessments among pool members, including assessment
2 of health insurers and reinsurers based upon the number of
3 persons they cover through primary, excess and stop-loss
4 insurance in the state.

5 B. If assessments exceed actual losses and
6 administrative expenses of the pool, the excess shall be held
7 at interest and used by the board to offset future losses or to
8 reduce pool premiums. As used in this subsection, "future
9 losses" includes reserves for incurred but not reported claims.

10 C. The proportion of participation of each member
11 in the pool shall be determined annually by the board based on
12 annual statements and other reports deemed necessary by the
13 board and filed with it by the member. Any deficit incurred by
14 the pool shall be recouped by assessments apportioned among the
15 members of the pool pursuant to the assessment formula provided
16 by Subsection A of this section; provided that the assessment
17 for any pool member shall be allowed as a fifty-percent credit
18 on the premium tax return for that member and a seventy-five-
19 percent credit on the premium tax return for that member for
20 the assessments attributable to pool policy holders that
21 receive premiums, in whole or in part, through the federal Ryan
22 White CARE Act, the Ted R. Montoya hemophilia program at the
23 university of New Mexico health sciences center, the children's
24 medical services bureau of the public health division of the
25 department of health or other program receiving state funding

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1 or assistance.

2 D. The board may abate or defer, in whole or in
3 part, the assessment of a member of the pool if, in the opinion
4 of the board, payment of the assessment would endanger the
5 ability of the member to fulfill its contractual obligation.
6 In the event an assessment against a member of the pool is
7 abated or deferred in whole or in part, the amount by which
8 such assessment is abated or deferred may be assessed against
9 the other members in a manner consistent with the basis for
10 assessments set forth in Subsection A of this section. The
11 member receiving the abatement or deferment shall remain liable
12 to the pool for the deficiency for four years."

13 Section 6. A new section of the Medical Insurance Pool
14 Act, Section 59A-54-10.1 NMSA 1978, is enacted to read:

15 "59A-54-10.1. [NEW MATERIAL] SUPPLEMENTAL ASSESSMENTS--
16 CREDIT AGAINST PREMIUM TAX.--

17 A. Following the close of each fiscal year and
18 before calculating assessments pursuant to Section 59A-54-10
19 NMSA 1978, the pool administrator shall calculate a
20 supplemental assessment to be paid by each insurer. The
21 supplemental assessment for each insurer shall be determined by
22 multiplying the balance of the medical insurance pool
23 enhancement fund at the end of the previous fiscal year by the
24 fraction determined pursuant to the provisions of Subsection A
25 of Section 59A-54-10 NMSA 1978 for that insurer, provided that

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1 the board may adopt other or additional methods of adjusting
2 the formula to achieve equity of the supplemental assessments
3 among pool members, including assessment of health insurers and
4 reinsurers based upon the number of persons they cover through
5 primary, excess and stop-loss insurance in the state.

6 B. The full amount of the supplemental assessment
7 paid by a member may be taken as a credit against the premium
8 tax due by that member."

9 Section 7. A new section of the Medical Insurance Pool
10 Act is enacted to read:

11 "[NEW MATERIAL] MEDICAL INSURANCE POOL ENHANCEMENT
12 FUND.--The "medical insurance pool enhancement fund" is created
13 in the state treasury. The fund shall consist of
14 distributions, transfers, appropriations, gifts, grants,
15 donations and bequests made to the fund. Each year, after
16 supplemental assessments have been determined pursuant to
17 Section 59A-54-10.1 NMSA 1978, the state treasurer shall
18 transfer an amount equal to the balance existing in the medical
19 insurance pool enhancement fund at the end of the previous
20 fiscal year from that fund to the general fund."

21 Section 8. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2008.